

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	4:07CR3021
v.)	
)	
STEVEN W. HICKEY,)	
)	MEMORANDUM AND ORDER
Defendant.)	
_____)	

A telephone conference was held with counsel in accordance with Fed. R. Crim. P. 17.1 on this date. Counsel discussed the pending motion for production of documents and tangible things and the fact that the government is not in possession of the materials sought. The court was advised that prior requests from government counsel to obtain the materials had been unsuccessful, and the use of a subpoena may be necessary. The court also determined that at least preliminarily, it appears the materials sought may be relevant and admissible on the defendant's motion to suppress. It was also determined that producing the requested materials only on the day of the evidentiary hearing on the motion to suppress would not be sufficient to allow adequate preparation time by defense counsel of the defendant's expert witness. Indeed, if the materials were so produced, a continuance of the hearing would be required and the expenses and time expended in obtaining the presence of witnesses would be for naught. To avoid such undue delay and expense, it was agreed a subpoena should be issued for service on the custodian(s) of these materials, and the hearing on the motion to suppress should be continued until they have been received and reviewed.

IT THEREFORE HEREBY IS ORDERED:

1. The hearing on the motion to suppress is continued to May 3, 2007 at 1:30 p.m. before the undersigned. In the event the hearing is not concluded by the end of the day, it will continue to May 4, 2007 at 1:30 p.m.

2. The clerk shall issue the subpoena as requested by defense counsel pursuant to Fed. R. Civ. P. 17(c) and NECrimR 17.2 and this order. Production of the materials shall be, in the absence of other directives agreed by counsel, at the time originally scheduled for the hearing, April 12, 2007 at 9:00 a.m. at the Office of the United States Attorney, United States Courthouse, Lincoln, Nebraska.

3. The motion to compel, filing 26, is denied as moot, without prejudice to any motion for protective order or to quash that may be filed in response to the subpoena.

DATED this 3rd day of April, 2007.

BY THE COURT:

s/ *David L. Piester*

David L. Piester
United States Magistrate Judge